Service Chemical Supply Corporation *and* Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO. Case 21–CA–31902

April 13, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

Upon charges filed by the Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO (the Union) on March 3, 1997, and amended on July 10, 1997, the General Counsel of the National Labor Relations Board issued a complaint on July 16, 1997, against Service Chemical Supply Corporation, the Respondent, alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charges and the complaint were properly served on the Respondent.[1] On July 30, 1997, the Respondent's counsel filed an answer to the complaint, stating generally that the Respondent ''denies any unfair labor practices,'' ''explaining the closing'' and ''dissolution'' of the corporation as the result of financial problems brought about by the assessment of certain tax liabilities, decreasing sales, and uncollectable overdue accounts receivable, and stating that the former proprietors of the corporation intended to file personal bankruptcy as well. Copies of the certificate of corporate dissolution and a tax clearance certificate were attached. The answer failed, however, to respond directly to the specific allegations in the complaint.[2] By letter of September 12, 1997, the General Counsel notified the Respondent of the inadequacy of its answer, explained that the Respondent must ''admit, deny, or explain each fact alleged in the complaint,'' enclosed a copy of Section 102.20 of the Board's Rules and Regulations,[3] and advised that the failure to file an amended answer by September 30, 1997, could result in the General Counsel's seeking summary judgment. Receiving no response, on December 1, 1997, the General Counsel telephoned the Respondent's counsel and informed her that the General Counsel would file a Motion for Summary Judgment if a more responsive answer were not filed by close of business December 2, 1997. On December 8, 1997, the General Counsel contacted the Respondent's counsel by telephone and a subsequent confirming letter, and reiterated its intention to seek summary judgment in the absence of a more responsive answer. The Respondent filed no further response.

On December 22, 1997, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. The General Counsel requests that all the allegations of the complaint be deemed admitted to be true, that the Respondent be found to have violated Section 8(a)(5) and (1) of the Act without taking evidence in support of the complaint, and that the Board issue a decision and appropriate remedial Order.

On December 29, 1997, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) by closing its business without prior timely notice to the exclusive collective-bargaining representative of its employees and without having afforded the Union an opportunity to bargain in good faith about the effects of the closing on employees.

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from the date of service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint shall be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 12, 1997, advised the Respondent's counsel of the deficiencies in its answer, what was required for an

[1] The complaint was served by certified mail on the Respondent at the last known business address and to its president, Eve Avilez, and by regular mail to its co-owner, Frank Avilez, and to the office of its legal counsel. Only the complaint sent to the business address was returned to the Regional Office. A letter from the Respondent's counsel, dated July 28, 1997, confirms the Respondent's July 18, 1997 receipt of the complaint and asserts an intention to file an answer.

[2] Par. 4 of the Respondent's ''answer,'' reads, in part, that ''[t]he assets of the business were not moved to 20545 Bellshaw, Carson, California as the complaint charges.'' There is no corresponding allegation in the complaint; however, language in the charge and the amended charge sets forth this contention. In any event, we find this statement nonresponsive to the complaint.

[3] Sec. 102.20 of the Board's Rules and Regulations reads, in full, as follows:

> The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

adequate answer, and specified a reasonable time in which the Respondent could provide such an answer. Thereafter by telephone on December 1, 1997, and again by telephone and letter on December 8, 1997, the Region notified the Respondent that unless an amended answer comporting with the requirements under the Board's Rules and Regulations was received immediately, a Motion for Summary Judgment would be filed.

We find that the Respondent's July 30, 1997 ''answer,'' filed by its attorney, offering a general denial that it had committed any unfair labor practices and identifying certain financial difficulties which led to its closing is insufficient to constitute an adequate answer to the complaint under Section 102.20 of the Board's Rules and Regulations because it does not specifically admit, deny, or explain each of the allegations in the complaint. See *O.P. Held, Inc*., 286 NLRB 676 (1987). Thus, in the absence of good cause being shown for its failure to file a timely adequate answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, at its facility in Pico Rivera, California, has been engaged in the business of purchasing and selling dry-cleaning supplies where it annually purchased and received goods valued in excess of $50,000 directly from other enterprises located within the State of California, each of which had received these goods directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time truck drivers and warehousemen employed by the Employer at 7869 South Paramount Boulevard, Pico Rivera, California; excluding all other employees, office clerical employees, professional employees, and supervisors as defined in the Act.

Since at least September 26, 1995, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent one of which is effective from October 1, 1994, to October 1, 1997.

On January 30, 1997, the Respondent closed its business without having given prior timely notice to the Union of its decision to close and without having afforded the Union an opportunity to bargain over the effects of its decision on unit employees.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees, and therefore has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent closed its operations without providing the Union with timely prior notice or opportunity to bargain over the effects of the closing on the employees, we will require the Respondent to bargain upon request with the Union over the effects of the closing and to make whole employees for the losses incurred as a result of this unfair labor practice in accordance with *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closure on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; and (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to those employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accord-

ance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Service Chemical Supply Corporation, Pico Rivera, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of the employees in the unit with respect to the effects on unit employees of its decision to close the Pico Rivera, California facility.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively in good faith with the Union with respect to the effects on unit employees of the closing of its Pico Rivera, California facility, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay the employees in the following appropriate unit their normal wages for the period set forth in the remedy section of this decision.

> All full-time and regular part-time truck drivers and warehousemen employed by us at 7869 South Paramount Boulevard, Pico Rivera, California; excluding all other employees, professional employees, and supervisors as defined in the Act.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, mail an exact copy of the attached notice marked ''Appendix,''[4] to Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO, and to all unit employees. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of the employees in the following unit by closing our Pico Rivera, California facility and terminating all unit employees without affording the Union prior notice or an opportunity to bargain with respect to the effects on the unit employees of the decision.

> All full-time and regular part-time truck drivers and warehousemen employed by us at 7869 South Paramount Boulevard, Pico Rivera, California; excluding all other employees, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union with respect to the effects on unit employees of our decision to close our Pico Rivera, California facility, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay the unit employees who were employed at the Pico Rivera, California facility their normal wages for the period set forth in a decision of the National Labor Relations Board.

SERVICE CHEMICAL SUPPLY CORPORATION